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In re Application of
BALLON, Christian
Application No.: 09/367,645
PCT No.: PCT/FR98/02907
Int. Filing Date: 29 December 1998
Priority Date: 30 December 1997
Attorney's Docket No.: S1022/8141
For: SUBSCRIBER INTERFACE
PROTECTION CIRCUIT

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This decision is in response to applicant's "Letter to Examiner Requesting Withdrawal of Abandonment" filed on 04 June 2001. No fee is required.

BACKGROUND

On 29 December 1998, applicant filed international application PCT/FR98/02907 claiming priority to a French patent application filed 30 December 1997. A Demand for the international preliminary examination was not filed. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 30 August 1999.

On 14 August 1999, applicant filed a transmittal letter for entering the national stage in the United States under 35 U.S.C. 371, however, applicant did not include the basic national fee or provide authorization to charge counsel's Deposit Account for the required basic national fee.

On 17 November 1999, applicant claims to have called the PCT Branch of the United States Patent and Trademark Office (PTO) after discovering that the fees were not authorized to be charged from counsel's Deposit Account.

On 22 November 1999, applicant purportedly sent a check of \$840.00 for the basic national fee in the above-captioned application

On 20 November 2000, applicant filed a "Progress Inquiry" in the above-captioned application.

On 05 April 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicant failed to provide the full basic

national fee by twenty months pursuant to 37 CFR 1.494(b)(2).

On 12 April 2001, applicant submitted via facsimile various letters concerning the subject application.

On 04 June 2001, applicant filed the instant petition which was accompanied by, *inter alia*, exhibits A-J.

DISCUSSION

All Business to be Transacted in Writing

It is first noted that 37 CFR 1.2 states, in part that "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt." Therefore, any prior discussion between applicant and the PCT Branch of the PTO concerning the above-identified international application shall have no effect on this decision.

Paying the Basic National Fee

A review of the above-identified application confirms that the U.S. basic national fee was not properly paid prior to the expiration of twenty months from the earliest claimed priority date. Applicant did not include a check for the basic national fee when entering the national stage or provide authorization for the PTO to charge the required fee to counsel's Deposit Account.

In the instant petition to withdraw the holding of abandonment, applicant has not alleged that the proper basic national fee was provided prior to 30 August 1999. Consequently, the subject application was properly abandoned pursuant to 35 U.S.C. 371(d) and 37 CFR 1.494(b)(2) by the DO/EO/US.

Applicant Paid \$840.00 on 22 November 1999

Applicant also provided a date stamped filing receipt that a check of \$840.00 was received for the above-captioned application on 22 November 1999. MPEP 503 states that a postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Therefore, applicant has provided *prima facie* evidence that a check of \$840.00 was received by the PTO for the above-identified application on 22 November 1999.

However, the postcard receipt does not serve as *prima facie* evidence that the

check was cashed by the PTO. A review of the financial records does not demonstrate that a check of \$840.00 was cashed in the above captioned application. Applicant must provide evidence that the \$840.00 check (No. 17101) was cashed by the PTO to be credited for this money.

It is also noted that the DO/EO/US inadvertently charged the \$840.00 basic national fee from Deposit Account No. 23-2825 without proper authorization on 25 August 1999. This was a mistake. The \$840.00 was credited back to Deposit Account No. 23-2825 on 13 February 2001.

DECISION

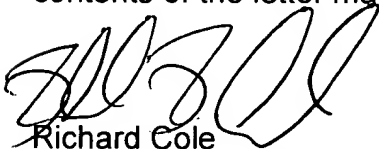
For the reasons discussed above, applicant's petition requesting to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The above-captioned remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw Holding of Abandonment."

Applicant may wish to file a petition to revive the above-captioned application pursuant to 37 CFR 1.137(a) or 1.137(b).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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